IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 834 of 2001
in
SPECIAL CIVIL APPLICATION NO 1349 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAIYALAL MANILAL MEHTA

Versus

BANK OF BARODA

Appearance:
1. LETTERS PATENT APPEAL No. 834 of 2001
MR KS JHAVERI for Appellant No.
MR DARSHAN M PARIKH for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 30/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. This Appeal is directed against the Judgment and order dated 26.2.2001 passed by the learned Single Judge

of this Court dismissing Special Civil Application No.1349 of 2001, filed by the appellant - petitioner.

2. Prior to filing of Special Civil Application No.1349 of 2001, the Appellant - petitioner had approached this Court by way of Special Civil Application No.5191 of 1992 which was disposed of by R.K.Abichandani,J. on 26.8.2000 with certain directions to the highest Authority i.e. General Manager to consider the case of the petitioner afresh in light of the communication and contemporaneous records, including the gradation list. Accordingly, the General Manager of the respondent Bank of Baroda decided the mater and passed an order dated 20.1.2001 and held that the correct birth date of the Appellant - petitioner is 7.4.1932 and not 10.7.1034 as claimed by the Appellant - petitioner. This order dated 20.1.2001 (Annexure : A to the main petition) was challenged by the appellant - petitioner before this Court by way of Special Civil Application No.1349 of 2001 which was dismissed on 26.2.2001 by the learned Single Judge of this Court on the ground that the findings recorded by the General Manager in the impugned order at Annexure : A can neither be called as superficial, nor ignoring the directions of this Court issued in Special Civil Application No.5191 of 1992. The learned Single Judge also observed in his order that he can not sit in Appeal over the order of the respondent Authorities contained in Annexure : A dated 20.1.2001 in his extraordinary jurisdiction under Article 226 of the Constitution of India.

3. Learned Counsel Shri Zaveri for the Appellant petitioner submitted that the direction issued by the learned Single Judge of this Court (R.K.Abichandani,J.) on 24.8.2000 in Special Civil Application No.5191 of 1992 was not properly considered by the General Manager while passing the impugned order dated 20.1.2001 (Annexure:A to the main writ petition). He submitted that several documents like (i) Bank's letter dated 2.11.1965, (ii) Seniority list dated 31.12.1981 and (iii) PF Statement of January 1987 were not properly considered by the General Manager while passing the impugned order dated 20.1.2001 at Annexure : A. Therefore, the impugned order be quashed and set aside and this Appeal be allowed and the writ petition filed by him before the learned Single Judge be accepted.

4. It is clear from the impugned order (Annexure:A) passed by the General Manager of the respondent Bank that in 1965 the Appellant submitted his own Affidavit and requested the Bank to correct his Birth-date from

7.4.1932 to 10.7.1934. At that point of time the Appellant was asked to submit his matriculation certificate or School Leaving Certificate, but he failed to do so. At the same time it is not in dispute that based on his date of Birth record in his School Leaving Certificate he himself corrected his birth date as 7.4.1932 and the bank's original record shows that his birth date is 7.4.1932.

5. In view of the above, all other documents like P.F.State, Pension Papers, etc. showing his birth date as 10.7.1934 are totally meaningless.

6. We have carefully gone through the earlier Judgment delivered by the learned Single Judge of this Court (R.K.Abichandani,J.) on 24.8.2000 in Special Civil Application No.5191 of 1992 as well as the impugned order dated 20.1.2001 passed by the General Manager at Annexure:A. Having carefully gone through the same we are of the considered opinion that the General Manager of the Respondent Bank has considered all the aspects of the matter and fully complied with the direction issued by the learned Single Judge of this Court in earlier writ petition i.e. Special Civil Application No.5191 of 1992. In that view of the matter it cannot be said that the impugned order dated 20.1.2001 suffers from any vice.

7. We have also carefully gone through the order passed by the learned Single judge dismissing the petition in limine and we are in complete agreement with the reasons assigned by the learned Single Judge. The learned Single Judge was fully justified in holding that this Court can not sit in Appeal over the order of the respondent Authority passed on 20.1.2001. This Court can not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

8. In view of the above discussion, we do not find any substance in this Appeal and accordingly it fail and is hereby dismissed. No order as to costs.

sd/-

(B.J. Shethna, J.)

Date : September 30, 2003 sd/-

(Ravi R.Tripathi,J.)

sas